

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

-----X	:	
SANDRA BETTERS,	:	
	:	
Plaintiff,	:	Civil Action No. 1:23-cv-00882-JLS
	:	
v.	:	
	:	
NARDIN ACADEMY, MARSHA SULLIVAN,	:	
MICHAEL LAWLEY, FRANK EWING,	:	
LUKE JACOBS, CHARLIE CHIAMPOU,	:	
PATRICIA LORENCE, KENT LORENCE AND	:	
THERESE FORTON-BARNES,	:	
	:	
Defendants.	:	
-----X	:	

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS'
MOTION TO APPOINT ARBITRATOR**

WIGDOR LLP

Michael J. Willemin
Monica Hincken

85 Fifth Avenue
New York, NY 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845
mwillemin@wigdorlaw.com
mhincken@wigdorlaw.com

Counsel for Plaintiff

Plaintiff Sandra Betters (“Plaintiff” or “Dr. Betters”) respectfully submits this memorandum of law in opposition to the Motion to Appoint Arbitrator filed by Defendants Nardin Academy, Marsha Sullivan, Charlie Chiampou and Luke Jacobs (“Defendants”). For the following reasons, Defendants’ Motion should be denied in its entirety.

PRELIMINARY STATEMENT

In Defendants’ underlying Motion to Compel Arbitration, Defendants asked the Court to direct arbitration before the American Arbitration Association (“AAA”) for resolution under its commercial or employment rules in Buffalo, New York. See Dkt. No. 62 at p. 12. Indeed, they acknowledged that “the AAA employment rules provide a mechanism [for] AAA designation where there is no available method for appointment.” Id. At the parties’ oral argument on May 30, 2024, after the Court indicated that it would compel arbitration, Plaintiff pointed out that the employment rules should apply to this employment dispute and suggested that the parties attempt to agree upon an arbitrator before the matter was referred to AAA. Ultimately, the parties were unable to agree upon an arbitrator. Instead of sticking with their initial request (that the Court refer this matter to AAA for an unbiased arbitrator selection process), Defendants have changed course and now ask the Court to simply appoint one of their handpicked arbitrators.

I. BACKGROUND OF DISPUTE

After a full briefing and oral argument on Defendants’ Motion to Compel Arbitration, the Court made an oral ruling on May 30, 2024 that ordered the applicable claims to arbitration. See Dkt. No. 104. At the oral argument, it seemed clear that the Court was prepared to refer this matter to AAA, under the employment rules, for arbitrator selection and adjudication. The only reason that did not happen is because Plaintiff’s counsel suggested that the parties attempt to agree upon an arbitrator. Ultimately, the parties did not agree upon an arbitrator. Rather than sticking to their

initial request, which was to “direct arbitration before the AAA for resolution under its Commercial or Employment Rules (or other appropriate arbiter) in Buffalo, New York” (see Dkt. No. 62), Defendants now ask the Court to appoint one of the handpicked arbitrators that they proposed and Plaintiff rejected.

Defendants’ response remains puzzling. Despite affirmatively requesting the arbitration be held pursuant to either the AAA employment or commercial rules, Defendants effectively took the position that the Rules outlined in the AAA for the selection of an arbitrator are not acceptable to them. Plaintiff acknowledged Defendants’ position in addition to Plaintiff’s disagreement with the position.¹

On June 7, 2024, Defendants filed a joint status report identifying that agreement was reached with respect to arbitrating before a single arbitrator in Buffalo but requested two additional weeks to allow the parties to reach agreement on an arbitrator. See Dkt. No. 105.

On the same date, the Court then issued a written Order directing the parties to arbitrate all claims set forth in the Amended Complaint against Nardin Academy, Marsha Sullivan, Charlie Chianpou, Luke Jacobs, Michael Lawley and Frank Ewing.² See Dkt. No. 106. The Court further ordered that pursuant to U.S.C. § 5, arbitration shall take place before a single arbitrator in Buffalo, New York. Id. Finally, the Court ordered the parties to file a joint status report identifying an agreed-upon arbitrator by July 21, 2024. Id.

¹ Defendants appear to take issue with the fact that Plaintiff had not previously raised her position that the arbitrator should be appointed by the AAA; however, it is unclear to Plaintiff when Defendants would have expected Plaintiff to raise that given that Plaintiff opposed arbitration in the first instance and affirmatively raised the position during the parties’ first correspondence after the Court ordered arbitration.

² Defendants Michael Lawley and Frank Ewing did not file a motion to appoint an arbitrator or join Defendants Nardin Academy, et al.’s motion.

II. THE PARTIES DID NOT AGREE ON AN ARBITRATOR

On June 11, 2024, Defendants set forth the following proposal for selecting an arbitrator: (1) each side identifies five (or some other reasonable number) of potential arbitrators to exchange; (2) the parties can then confer about those selections; and (3) neither party could have any contact with the potential arbitrators. Plaintiff agreed to Defendant's proposal. Defendants then provided the names of five potential arbitrators, and Plaintiff proposed three. None of Defendants' proposed arbitrators were acceptable to Plaintiff, and vice versa. Notably, Plaintiff did not berate or make accusations against Defendants for rejecting Plaintiff's proposed candidates. Plaintiff understands that it is fairly typical in the course of selecting a neutral for parties to disagree, which is one of the reasons the AAA selection process exists.

Yet, after Plaintiff explained to Defendants that Plaintiff was not inclined to use Defendants' suggested arbitrators (see Ex. 1), Defendants' responses were shockingly disproportionate to the situation. For example, defense counsel, Preston Zarlock, equated Plaintiff's rejection of the proposed candidates with failing to make an attempt to reach an agreement (despite Plaintiff's counsel suggesting the parties attempt to agree on an arbitrator in the first instance) (Id.); defense counsel, D. Charles Roberts, Jr., said "While agreement between the parties may have been unlikely and that's fine, Thomas Stander was a supreme court judge for 30 years. Hard to say that is 'defense friendly' with a straight face." See Ex. 2. And, defense counsel, Amy Habib Rittling, then questioned whether Plaintiff's counsel had consulted with experienced members of the bar in Buffalo and Rochester. See Ex. 3. When Plaintiff's counsel attempted to explain it was not personal and said he was simply reporting what he was told which was not a reason get bent out of shape, D. Charles Roberts, Jr. responded, "Trust me, it's not personal and that is not me 'bent out of shape.'" See Ex. 2.

Defendants' responses to Plaintiff's rejection of their proposed candidates (particularly when Defendants also rejected all of Plaintiff's candidates) and their refusal to agree to allow the AAA to appoint an arbitrator after expressly asking the Court to direct the AAA to arbitrate this matter only increases Plaintiff's concern about the impartiality of Defendants' selections.

Ironically, despite Defendants' disproportionate response to Plaintiff's determination that their selections were too defense friendly, Defendants argue in their motion that rejecting one of Plaintiff's candidates was appropriate because she is "primarily an active plaintiffs' attorney." See Defs.' Motion at 11. Defendants rejected Plaintiff's other two selections because they serve on the same Board of Advisors for Scheinman Institute on Conflict Resolution as Wigdor's founding partner. However, the Board is comprised of individuals across the spectrum of employment litigation and is not indicative of being plaintiff or defense friendly. Regardless, the point is that both parties rejected the other party's proposed candidates for reasons they believed to be valid, which is the right of each party and certainly not unusual. The only thing unusual about it in this situation was Defendants' reaction.

III. THE AAA SHOULD APPOINT AN ARBITRATOR

The *Defendants* requested that this Court order arbitration through the AAA under either the employment or commercial rules. Presumably it is implied, then, that the Defendants were familiar with and accepting of the AAA's arbitration procedures.

The Court then ordered the parties to arbitration and Plaintiff agreed that it would arbitrate all relevant claims through the AAA – just as Defendants requested. Yet, Defendants are now arguing that the Court should appoint the arbitrator because the arbitration agreement did not specify the method of appointment despite the AAA having a fully robust method of appointing arbitrators.

While it is certainly true under 9 U.S.C. § 5 that a court may appoint an arbitrator if the arbitration agreement does not specify a method of appointment or if that method is not followed, this argument is inapplicable here given that the parties have agreed to arbitrate under the AAA, which does specify its appointment method. Defendants' assertion that the AAA appointment rules are only applicable when an arbitrator is not otherwise appointed is a circular argument that presupposes that the Court has already selected an arbitrator.

However, what AAA Employment Rule 12 actually says is that “[i]f the parties have not appointed an arbitrator and have not provided any method of appointment, the arbitrator shall be appointed [using the AAA mechanism].”³ Neither of those two preceding requirements have occurred here – the parties have not appointed an arbitrator and the arbitration agreement does not provide for another method to appoint an arbitrator. As a result, the AAA rules require appointment using the AAA mechanism. AAA Employment Rule 13 confirms this interpretation in stating that “If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed.”⁴ That is inapplicable here given that neither of those options occurred.

Further, Defendants' argument that Plaintiff's alleged failure to comply with the arbitration clause by filing a federal lawsuit “requires the Court to select an arbitrator,” has been soundly rejected. See In re Salomon Inc. Shareholders' Derivative Litig. 91 Civ. 5500 (RRP), 68 F.3d 554, 560 (2d Cir. 1995) (holding that “plaintiffs cannot be reasonably said to have ‘fail[ed] to avail’ themselves of arbitration [by filing a federal lawsuit] [because] [t]o hold otherwise would mean that any time a party in good faith tested the scope of an arbitration agreement by bringing suit in

³ See https://www.adr.org/sites/default/files/EmploymentRules_Web_2.pdf.
⁴ Id.

court, the court could invoke § 5 to name arbitrators without following any procedures or limitations contained in the agreement).

Finally, Defendants' cited case law is inapposite. For example, Defendants cite Odyssey Reinsurance Co. v. Certain Underwriters at Lloyd's London Syndicate 53, 615 F. App'x 22 (2d Cir. 2015) as standing for the proposition that Section 5 of the FAA obligates a court to appoint an umpire if there is a breakdown in the selection process. See Defs.' Motion at 6. However, the Court in Odyssey held only that there is an obligation to correct such a breakdown "[w]hen an arbitration agreement provides 'a method of naming or appointing...an umpire.'" That did not happen here. Not only did the arbitration provision at issue here fail to provide any method to appoint an arbitrator, but it cannot even be argued that there has been a breakdown in the selection process simply because the parties disagree about which process should be used.

Defendants' reliance on Stop & Shop Supermarket Co. LLC v. United Food and Com. Workers Union Loc. 342, AFL-CIO, CLC, 246 F. App'x 7, 9 (2d Cir. 2007) is similarly flawed. Unlike here, the Stop & Shop matter entailed a Collective Bargaining Agreement with a detailed arbitration provision that specified the manner to select an arbitrator. However, there was a lapse in naming a replacement arbitrator after the original arbitrator recused himself, which triggered the Section 5 provision that a lapse in naming an arbitrator permits a district court to appoint an arbitrator. Again, that has not occurred here.

Morelli v. Alters, No. 1:19 Civ. 10707 (GHW), 2020 WL 1285513, at *9 (S.D.N.Y. Mar. 18, 2020) does include reference to the FAA providing an avenue to fill gaps in arbitration agreements, but the case does not decide any issue relating to the appointment of an arbitration and is simply speculating that if one of the party's in the litigation moved to compel arbitration, it would likely be granted because indefiniteness does not alone defeat a motion to compel. There

is no dispute that Section 5 provides an avenue to fill gaps if necessary. However, there is no “gap” that needs to be filled here because Defendants *already asked the Court to refer this matter to AAA arbitration*.

Similarly, Defendants cite Jamieson v. Sec. Am., Inc., No. 19 Civ. 1817 (VB), 2019 WL 6977126, at *5 (S.D.N.Y. Dec. 20, 2019) to support the argument that parties *may* request that a Court appoint an arbitrator. There is no dispute on that point. The issue here is that there is no valid reason for the Court to appoint an arbitrator when Defendants asked the Court to refer this matter to AAA and Plaintiff agrees that is the appropriate course.

Defendants cannot have it both ways. Defendants cannot direct the Court to order arbitration under the rules of the AAA and then also refuse to follow those rules when they do not like them. As a result, Plaintiff asks the Court to refer this matter to AAA for the appointment of an arbitrator.

Alternatively, if the Court is going to appoint a specific arbitrator, we respectfully suggest that it is incumbent upon the Court to disclose any potential conflicts of interest, or appearances of any conflicts of interest that would be disclosed by any arbitrator adjudicating this matter, including, *inter alia*, any personal or business relationships between Your Honor and/or Your Honor’s family and any of the parties. Plaintiff does not make this request to be accusatory. Rather, Plaintiff views the selection of an arbitrator as an arbitral decision itself and, as such, that whichever individual is making that determination should make any appropriate disclosures.

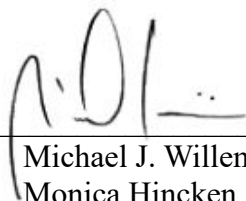
CONCLUSION

For all of the foregoing reasons, Defendants' Motion to Appoint an Arbitrator should be denied and this matter should be referred to AAA arbitration under the employment rules.

Dated: July 15, 2024
New York, New York

Respectfully submitted,

WIGDOR LLP

By: 

Michael J. Willemin
Monica Hincken

85 Fifth Avenue
New York, NY 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845
mwillemin@wigdorlaw.com
mhincken@wigdorlaw.com

Counsel for Plaintiff

Exhibit 1

To: Monica Hincken
Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

From: Preston L. Zarlock <PZarlock@phillipslytle.com>
Sent: Tuesday, June 18, 2024 4:21 PM
To: Michael J. Willemin <mwillemin@wigdorlaw.com>
Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>
Subject: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael -

We are disappointed by your response. A claim that any arbitrator we might suggest that resides in the judicial district where the arbitration will occur has a conflict or is otherwise vaguely unacceptable is plainly not an attempt to get to an agreement on selection as the Judge directed. We proposed 5 candidates, three of which are from Rochester (which is not local at all) and two of which are former members of the judiciary. It is hard to understand why none of them are acceptable.

On plaintiff's end only 3 candidates were proposed. Among other things, one of them is local to Buffalo (despite plaintiff's claim that any such person would likely be conflicted) but is primarily an active plaintiff attorney on this type of case. The other two appear to have some level of personal connection with your firm's principal.

In any event, while your email does not fill us with confidence of ultimate success, we believe it is incumbent on us to try to confer and attempt to reach some agreement rather than task the court. Tomorrow is a Holiday but we are available Thursday morning before 11 for a conference.

Regards,

Preston

From: Michael J. Willemin <mwillemin@wigdorlaw.com>
Sent: Tuesday, June 18, 2024 1:08 PM
To: Preston L. Zarlock <PZarlock@phillipslytle.com>
Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>
Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Preston,

Hope all is well. Have you given a look to our proposed arbitrators? I am not inclined to use the ones you proposed, and think it is highly unlikely in any event that a person who is local would not have a conflict.

Thanks,

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com



This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Friday, June 14, 2024 6:03 PM

To: Joshua Glasgow <JGlasgow@phillipslytle.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

I've only got three. I was hoping for some input on a couple more, and may have some over the weekend, but if you won't consider anyone after today I understand.

Martin Scheinman
Jacqueline Drucker
Harvey Sanders

Michael J. Willemin

Partner

212 257 6800

85 Fifth Avenue
New York, NY 10003

wigdorlaw.com



This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Joshua Glasgow <JGlasgow@phillipslytle.com>

Sent: Friday, June 14, 2024 6:01 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>; Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael, per the agreed protocol in our emails below, defendants suggest the following five potential arbitrators:

William Bauer - <https://www.woodsoviattgilman.com/people/william-g-bauer>

Richard Chapman - <https://www.linkedin.com/in/richardnchapman/>

Ann Evanko - <https://www.hurwitzfine.com/lawyers/profile/ann-evanko>

Michael McClaren - <https://www.websterszanyi.com/our-people/michael-mcclaren/>

Thomas Stander - <https://adamsleclair.law/attorneys/hon-thomas-a-stander/>

Thanks,
Josh

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Friday, June 14, 2024 11:51 AM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: Re: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

That's fine

On Jun 14, 2024, at 11:39 AM, Michael J. Willemin <mwillemin@wigdorlaw.com> wrote:

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Can we push this back to 6pm?

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com

— — — — —
—

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Tuesday, June 11, 2024 11:25 AM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; CRoberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: FW: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael -

As you can see the Court thankfully clarified that we have until June 21, not June 12 to agree on an arbitrator. That gives us a bit of time but not that much.

Defendants suggest the following protocol for selection of an arbitrator. Each side is to identify 5 (or some other reasonable number) of potential arbitrators and exchange them by noon this Friday, June 14 and then we can confer on Monday June 17. In selecting candidates no party or their representatives will have any contact with the candidates - not even to gauge conflicts or interest in serving. We can do that if any are potentially acceptable.

Let me know if this is acceptable or If you have other suggestions.

Regards

Preston

From: webmaster@nywd.uscourts.gov <webmaster@nywd.uscourts.gov>
Sent: Monday, June 10, 2024 4:36 PM
To: Courtmail@nywd.uscourts.gov
Subject: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Docket Text:
E-Filing Notification re [106] ORDER
referring case to arbitration and staying the action: Entry modified on 6/10/2024
to correct the status report due date from June 12, 2024 to <u>June 21, 2024.</u>
(KLH)

Preston L. Zarlock
Partner



One Canalside
125 Main Street
Buffalo, NY 14203-2887
Phone 716 847 5496
Fax 716 852 6100

620 Eighth Ave
38th Floor
New York, NY 10018-1442
Phone 212 759 4888 Ext. 5496
Fax 212 308 9079
PZarlock@phillipslytle.com
www.phillipslytle.com
[Download vCard](#)



Think before you print and save a tree.

This electronic transmission and any attachments hereto are intended only for the use of the individual or entity to which it is addressed and may contain confidential information belonging to the sender which is protected by the attorney-client privilege. If you have reason to believe that you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this electronic transmission is strictly prohibited. If you have reason to believe that you have received this transmission in error, please notify immediately by return e-mail and delete and destroy this communication.

WARNING: E-mail communications cannot be guaranteed to be timely, secure, error-free or virus-free. The recipient of this communication should check this e-mail and each attachment for the presence of viruses. The sender does not accept any liability for any errors or omissions in the content of this electronic communication which arises as a result of e-mail transmission.

Exhibit 2

To: Monica Hincken
Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

From: Michael J. Willemin <mwillemin@wigdorlaw.com>
Sent: Thursday, June 20, 2024 5:38 PM
To: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>
Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>
Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

To you as well.

Michael J. Willemin
Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com



This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>
Sent: Thursday, June 20, 2024 5:36 PM
To: Michael J. Willemin <mwillemin@wigdorlaw.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>
Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>
Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Trust me, it's not personal and that is not me "bent out of shape." Have a nice night.

D. Charles Roberts Jr.
Member Attorney



465 Main Street, Suite 600 | Buffalo, NY 14203
471 Delaware Avenue | Buffalo, NY 14202
Tel: 716-854-4300
Fax: 716-854-2787



NOTE: Do not transfer funds by wire or cashier's check without verbal confirmation. If you receive an email from any person purporting to be from our firm requesting a transfer, please contact our office immediately and speak with the attorney managing that file for verbal confirmation.

Notice: This e-mail message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee(s). If you are not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply email or by telephone and delete this message and all copies and backups thereof.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Thursday, June 20, 2024 5:33 PM

To: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: {External} RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

You all seem to be taking everything very personally. I am reporting what I am being told. The fact that I did not capitulate to someone on your list is hardly a reason to get all bent out of shape.

Michael J. Willemin
Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com



This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>
Sent: Thursday, June 20, 2024 5:30 PM
To: Michael J. Willemin <mwillemin@wigdorlaw.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>
Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>
Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

While agreement between the parties may have been unlikely and that's fine, Thomas Stander was a supreme court judge for 30 years. Hard to say that is "defense friendly" with a straight face.

D. Charles Roberts Jr. Member Attorney



465 Main Street, Suite 600 | Buffalo, NY 14203
 471 Delaware Avenue | Buffalo, NY 14202
 Tel: 716-854-4300
 Fax: 716-854-2787



NOTE: Do not transfer funds by wire or cashier's check without verbal confirmation. If you receive an email from any person purporting to be from our firm requesting a transfer, please contact our office immediately and speak with the attorney managing that file for verbal confirmation.

Notice: This e-mail message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee(s). If you are not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply email or by telephone and delete this message and all copies and backups thereof.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>
Sent: Thursday, June 20, 2024 5:01 PM
To: Preston L. Zarlock <PZarlock@phillipslytle.com>
Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; D. Charles Roberts Jr. <CRoberts@gross-shuman.com>; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>
Subject: {External} RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Counsel,

I have spoken with additional people all they have advised me across the board that your selections are defense friendly selections. I am not saying whether they are or are not, but I cannot agree to any of them.

Thanks,

Michael J. Willemin
Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com



This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Tuesday, June 18, 2024 9:47 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: Re: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Goodnight Preston, and enjoy your day off. Speak Thursday morning.

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Tuesday, June 18, 2024 9:43:06 PM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com <mroehl@roachbrown.com>; croberts@gross-shuman.com <croberts@gross-shuman.com>; kburke@gross-shuman.com <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Let me get this straight. You intend to ask Judge Sinatra to make disclosures and possibly recuse himself from appointing the arbitrator but did not do so on the motions to dismiss or on the motions to compel arbitration? Seems clearly frivolous. Very happy to litigate that.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Tuesday, June 18, 2024 9:36 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>
Subject: Re: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

I was referring to Judge Sinatra when I referenced the disclosures. Obviously the appointed arbitrator would have to make fulsome disclosures as well. And yes, I understand that you are objecting to the concept of Judge Sinatra appointing AAA to administer the arbitrator selection process, and I'm happy to litigate that if needed. Speak Thursday.

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com



This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Tuesday, June 18, 2024 9:29:35 PM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com <mroehl@roachbrown.com>; croberts@gross-shuman.com <croberts@gross-shuman.com>; kburke@gross-shuman.com <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael -

1030 AM Thursday works. We will set up a conference and circulate the info Thursday morning.

As we clearly advised previously, the AAA rules have not been agreed to and will not be until after an arbitrator is agreed to or appointed - so they currently have no application to this matter. Accordingly, if we cannot make progress on an agreement to an arbitrator, defendants will invoke their right to the Court's designation of the

arbitrator under these circumstances pursuant to 9 USC 5. I would expect, however, that any appointed arbitrator would have to disclose any conflicts to serving as an arbitrator.

I look forward to speaking with you on Thursday.

Regards

Preston

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Tuesday, June 18, 2024 4:31 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Preston,

I did my research on your candidates, which has led me to my viewpoint. Marty is an arbitrator and mediator that we have used many times. I don't know how you define a personal connection, but certainly we know him. Drucker was on a case I had years ago that went to a hearing and settled before a decision. I know of no connection between her and Doug, but maybe there is one.

I can speak Thursday at 1030am, if that works? Ultimately, as I noted last week, we intend on asking the court to appoint AAA to administer the selection process. If Judge Sinatra does decide to appoint an arbitrator himself, we will need him to make relevant disclosures regarding any connections that he or his family have to Nardin or any of the relevant players.

Thanks,

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com





This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Tuesday, June 18, 2024 4:21 PM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael -

We are disappointed by your response. A claim that any arbitrator we might suggest that resides in the judicial district where the arbitration will occur has a conflict or is otherwise vaguely unacceptable is plainly not an attempt to get to an agreement on selection as the Judge directed. We proposed 5 candidates, three of which are from Rochester (which is not local at all) and two of which are former members of the judiciary. It is hard to understand why none of them are acceptable.

On plaintiff's end only 3 candidates were proposed. Among other things, one of them is local to Buffalo (despite plaintiff's claim that any such person would likely be conflicted) but is primarily an active plaintiff attorney on this type of case. The other two appear to have some level of personal connection with your firm's principal.

In any event, while your email does not fill us with confidence of ultimate success, we believe it is incumbent on us to try to confer and attempt to reach some agreement rather than task the court. Tomorrow is a Holiday but we are available Thursday morning before 11 for a conference.

Regards,

Preston

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Tuesday, June 18, 2024 1:08 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Preston,

Hope all is well. Have you given a look to our proposed arbitrators? I am not inclined to use the ones you proposed, and think it is highly unlikely in any event that a person who is local would not have a conflict.

Thanks,

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com



This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Friday, June 14, 2024 6:03 PM

To: Joshua Glasgow <JGlasgow@phillipslytle.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

I've only got three. I was hoping for some input on a couple more, and may have some over the weekend, but if you won't consider anyone after today I understand.

Martin Scheinman
Jacqueline Drucker
Harvey Sanders

Michael J. Willemin

Partner

212 257 6800

85 Fifth Avenue
New York, NY 10003

wigdorlaw.com



This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Joshua Glasgow <JGlasgow@phillipslytle.com>

Sent: Friday, June 14, 2024 6:01 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>; Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael, per the agreed protocol in our emails below, defendants suggest the following five potential arbitrators:

William Bauer - <https://www.woodsoviattgilman.com/people/william-g-bauer>

Richard Chapman - <https://www.linkedin.com/in/richardnchapman/>

Ann Evanko - <https://www.hurwitzfine.com/lawyers/profile/ann-evanko>

Michael McClaren - <https://www.websterszanyi.com/our-people/michael-mcclaren/>

Thomas Stander - <https://adamsleclair.law/attorneys/hon-thomas-a-stander/>

Thanks,
Josh

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Friday, June 14, 2024 11:51 AM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: Re: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

That's fine

On Jun 14, 2024, at 11:39 AM, Michael J. Willemine <mwillemine@wigdorlaw.com> wrote:

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Can we push this back to 6pm?

Michael J. Willemine

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Tuesday, June 11, 2024 11:25 AM

To: Michael J. Willemine <mwillemine@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; CRoberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: FW: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael -

As you can see the Court thankfully clarified that we have until June 21, not June 12 to agree on an arbitrator. That gives us a bit of time but not that much.

Defendants suggest the following protocol for selection of an arbitrator. Each side is to identify 5 (or some other reasonable number) of potential arbitrators and exchange them by noon this Friday, June 14 and then we can confer on Monday June 17. In selecting candidates no party or their representatives will have any contact with the candidates - not even to gauge conflicts or interest in serving. We can do that if any are potentially acceptable.

Let me know if this is acceptable or If you have other suggestions.

Regards

Preston

From: webmaster@nywd.uscourts.gov <webmaster@nywd.uscourts.gov>
Sent: Monday, June 10, 2024 4:36 PM
To: Courtmail@nywd.uscourts.gov
Subject: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Docket Text:
E-Filing Notification re [106] ORDER
referring case to arbitration and staying the action: Entry modified on 6/10/2024
to correct the status report due date from June 12, 2024 to <u>June 21, 2024.</u>
(KLH)

Preston L. Zarlock
Partner



One Canalside
125 Main Street
Buffalo, NY 14203-2887
Phone 716 847 5496
Fax 716 852 6100

620 Eighth Ave
38th Floor
New York, NY 10018-1442
Phone 212 759 4888 Ext. 5496
Fax 212 308 9079
PZarlock@phillipslytle.com
www.phillipslytle.com
[Download vCard](#)



Think before you print and save a tree.

This electronic transmission and any attachments hereto are intended only for the use of the individual or entity to which it is addressed and may contain confidential information belonging to the sender which is protected by the attorney-client privilege. If you have reason to believe that you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this electronic transmission is strictly prohibited. If you have reason to believe that you have received this transmission in error, please notify immediately by return e-mail and delete and destroy this communication.

WARNING: E-mail communications cannot be guaranteed to be timely, secure, error-free or virus-free. The recipient of this communication should check this e-mail and each attachment for the presence of viruses. The sender does not accept any liability for any errors or omissions in the content of this electronic communication which arises as a result of e-mail transmission.

Exhibit 3

Subject: FW: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Thursday, June 20, 2024 11:55 PM

To: Amy Habib Rittling <ahabibrittling@lippes.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>; Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: Re: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Thank you for the somewhat insulting suggestion, but yes, I have consulted with experienced members of the plaintiffs' bar. It's becoming even more concerning that you all won't take no for an answer.

Michael J. Willemin

Partner

212 257 6800

85 Fifth Avenue

New York, NY 10003

wigdorlaw.com



This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Amy Habib Rittling <ahabibrittling@lippes.com>

Sent: Thursday, June 20, 2024 11:45 PM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>; Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com <mroehl@roachbrown.com>; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Hi Michael,

Are you conferring with experienced members of the plaintiff's employment bar in Buffalo and Rochester? Bauer, Chapman, and Stander are routinely accepted by the plaintiff's employment bar in both Buffalo and Rochester. I would say even Ann Evanko is fairly regularly accepted. I would urge you to reach out to established members of the plaintiff's bar for their thoughts before we need to report back on Friday.

Amy

Amy Habib Rittling
Partner



50 Fountain Plaza, Suite 1700
Buffalo, NY 14202-2216

1900 K Street, NW Suite 730
Washington, DC 20006

ph: 716.853.5100 ext. 1276 | d: 716.218.7575 | fx: 716.853.5199
ahabibrittling@lippes.com | lippes.com
[LinkedIn](#) // [Twitter](#) // [Facebook](#)

This email message, including attachments, are confidential and may be protected by the attorney/client or other applicable privileges. The information is intended to be conveyed only to the designated recipient(s) of the email message. Unauthorized use, dissemination, distribution or reproduction of this message by anyone other than the intended recipient(s) is strictly prohibited and may be unlawful. If you are not an intended recipient, please notify the sender immediately, delete the message from your email system, and destroy any other copies in your possession.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Thursday, June 20, 2024 10:57 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>; Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: Re: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Unfortunately, I don't have any other proposals. I'm not terribly familiar with the arbitrators over there, and given that multiple people have warned me against the folks you suggested, I remain of the view that the AAA selection process is most likely to result in the appointment of an impartial arbitrator. Given that you previously made a motion asking the judge to appoint AAA to oversee the selection process, I'm hoping that you will agree to that. If you won't, it begs the question as to why, which is why I referenced the need for disclosures.

Speak tomorrow,

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com



This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Thursday, June 20, 2024 5:43:31 PM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>; Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com <mroehl@roachbrown.com>; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: Re: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael, please let us know if you have any additional suggestions we will do likewise.

On Jun 20, 2024, at 5:38 PM, Michael J. Willemin <mwillemin@wigdorlaw.com> wrote:

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

To you as well.

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>

Sent: Thursday, June 20, 2024 5:36 PM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Trust me, it's not personal and that is not me "bent out of shape." Have a nice night.

D. Charles Roberts Jr.

Member Attorney

<[image005.png](#)> 465 Main Street, Suite 600 | Buffalo, NY 14203

471 Delaware Avenue | Buffalo, NY 14202

Tel: 716-854-4300

Fax: 716-854-2787

<[image006.png](#)> <[image010.png](#)>

<[image007.png](#)>

<[image008.png](#)>

NOTE: Do not transfer funds by wire or cashier's check without verbal confirmation. If you receive an email from any person purporting to be from our firm requesting a transfer, please contact our office immediately and speak with the attorney managing that file for verbal confirmation.

Notice: This e-mail message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee(s). If you are not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply email or by telephone and delete this message and all copies and backups thereof.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Thursday, June 20, 2024 5:33 PM

To: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: {External} RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

You all seem to be taking everything very personally. I am reporting what I am being told. The fact that I did not capitulate to someone on your list is hardly a reason to get all bent out of shape.

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com

[!\[\]\(003082e50e3009141f59bd5df831749f_img.jpg\) !\[\]\(f439ede8735757e3190eab35e168f1de_img.jpg\) !\[\]\(f5c165e0bd35116675db6686a30b1fea_img.jpg\) !\[\]\(8eeb5cc52b4d0f9a4ccc73b2d771855c_img.jpg\)](#)

[!\[\]\(17413706fd4997a1a4bdf85c6864eee1_img.jpg\)](#)

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: D. Charles Roberts Jr. <CRoberts@gross-shuman.com>

Sent: Thursday, June 20, 2024 5:30 PM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

While agreement between the parties may have been unlikely and that's fine, Thomas Stander was a supreme court judge for 30 years. Hard to say that is "defense friendly" with a straight face.

D. Charles Roberts Jr.
Member Attorney

[!\[\]\(56549452e01ca28bdf2500ced9653143_img.jpg\)](#) 465 Main Street, Suite 600 | Buffalo, NY 14203
471 Delaware Avenue | Buffalo, NY 14202
Tel: 716-854-4300
Fax: 716-854-2787

[<image006.png>](#) [<image010.png>](#)

[<image007.png>](#)

[<image008.png>](#)

NOTE: Do not transfer funds by wire or cashier's check without verbal confirmation. If you receive an email from any person purporting to be from our firm requesting a transfer, please contact our office immediately and speak with the attorney managing that file for verbal confirmation.

Notice: This e-mail message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee(s). If you are not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply email or by telephone and delete this message and all copies and backups thereof.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Thursday, June 20, 2024 5:01 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; D. Charles Roberts Jr. <CRoberts@gross-shuman.com>; B. Kevin Burke <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: {External} RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Counsel,

I have spoken with additional people all they have advised me across the board that your selections are defense friendly selections. I am not saying whether they are or are not, but I cannot agree to any of them.

Thanks,

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com

[<image011.png>](#) [<image012.png>](#) [<image013.png>](#) [<image014.png>](#)

[<image019.png>](#)

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message

to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Tuesday, June 18, 2024 9:47 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: Re: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Goodnight Preston, and enjoy your day off. Speak Thursday morning.

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Tuesday, June 18, 2024 9:43:06 PM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com <mroehl@roachbrown.com>; croberts@gross-shuman.com <croberts@gross-shuman.com>; kburke@gross-shuman.com <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Let me get this straight. You intend to ask Judge Sinatra to make disclosures and possibly recuse himself from appointing the arbitrator but did not do so on the motions to dismiss or on the motions to compel arbitration? Seems clearly frivolous. Very happy to litigate that.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Tuesday, June 18, 2024 9:36 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: Re: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

I was referring to Judge Sinatra when I referenced the disclosures. Obviously the appointed arbitrator would have to make fulsome disclosures as well. And yes, I understand that you are objecting to the concept of Judge Sinatra appointing AAA to administer the arbitrator selection process, and I'm happy to litigate that if needed. Speak Thursday.

Michael J. Willem

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com

[!\[\]\(23d9fc146e83b5c3013cfa32c784f8d5_img.jpg\)](#) [!\[\]\(f5c463b8c1554ac5049d611bd8e33a51_img.jpg\)](#) [!\[\]\(54f1390f33a36173a1b97c4b6eb40204_img.jpg\)](#) [!\[\]\(1301e78e125668a3a0cedabdef0db7f3_img.jpg\)](#)

[!\[\]\(c694a3ff3b077d76910920a6a1593ab4_img.jpg\)](#)

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Tuesday, June 18, 2024 9:29:35 PM

To: Michael J. Willem <mwillem@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com

<mroehl@roachbrown.com>; croberts@gross-shuman.com <croberts@gross-shuman.com>;

kburke@gross-shuman.com <kburke@gross-shuman.com>; Dennis C. Vacco <dvacco@lippes.com>;

Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib

Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson

<JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy

<EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael -

1030 AM Thursday works. We will set up a conference and circulate the info Thursday morning.

As we clearly advised previously, the AAA rules have not been agreed to and will not be until after an arbitrator is agreed to or appointed - so they currently have no application to this matter. Accordingly, if we cannot make progress on an agreement to an arbitrator, defendants will invoke their right to the Court's designation of the arbitrator under these circumstances pursuant to 9 USC 5. I would expect, however, that any appointed arbitrator would have to disclose any conflicts to serving as an arbitrator.

I look forward to speaking with you on Thursday.

Regards

Preston

From: Michael J. Willemin <mwillemin@wigdorlaw.com>
Sent: Tuesday, June 18, 2024 4:31 PM
To: Preston L. Zarlock <PZarlock@phillipslytle.com>
Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>
Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Preston,

I did my research on your candidates, which has led me to my viewpoint. Marty is an arbitrator and mediator that we have used many times. I don't know how you define a personal connection, but certainly we know him. Drucker was on a case I had years ago that went to a hearing and settled before a decision. I know of no connection between her and Doug, but maybe there is one.

I can speak Thursday at 1030am, if that works? Ultimately, as I noted last week, we intend on asking the court to appoint AAA to administer the selection process. If Judge Sinatra does decide to appoint an arbitrator himself, we will need him to make relevant disclosures regarding any connections that he or his family have to Nardin or any of the relevant players.

Thanks,

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com

<[image011.png](#)> <[image012.png](#)> <[image013.png](#)> <[image014.png](#)>

<[image021.png](#)>

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Preston L. Zarlock <PZarlock@phillipslytle.com>
Sent: Tuesday, June 18, 2024 4:21 PM
To: Michael J. Willemin <mwillemin@wigdorlaw.com>
Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander

Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael -

We are disappointed by your response. A claim that any arbitrator we might suggest that resides in the judicial district where the arbitration will occur has a conflict or is otherwise vaguely unacceptable is plainly not an attempt to get to an agreement on selection as the Judge directed. We proposed 5 candidates, three of which are from Rochester (which is not local at all) and two of which are former members of the judiciary. It is hard to understand why none of them are acceptable.

On plaintiff's end only 3 candidates were proposed. Among other things, one of them is local to Buffalo (despite plaintiff's claim that any such person would likely be conflicted) but is primarily an active plaintiff attorney on this type of case. The other two appear to have some level of personal connection with your firm's principal.

In any event, while your email does not fill us with confidence of ultimate success, we believe it is incumbent on us to try to confer and attempt to reach some agreement rather than task the court. Tomorrow is a Holiday but we are available Thursday morning before 11 for a conference.

Regards,

Preston

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Tuesday, June 18, 2024 1:08 PM

To: Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Preston,

Hope all is well. Have you given a look to our proposed arbitrators? I am not inclined to use the ones you proposed, and think it is highly unlikely in any event that a person who is local would not have a conflict.

Thanks,

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com

[!\[\]\(83f22ed94ec5517769dd76d702c6bfd8_img.jpg\)](#) [!\[\]\(58518edde73d42d67a35a8ed26134c7b_img.jpg\)](#) [!\[\]\(256548e00e7fa4879dddf376cbbab973_img.jpg\)](#) [!\[\]\(4df0d38cb8d3da3858f8bf3819cfafd3_img.jpg\)](#)

[!\[\]\(8d0f0e0fe25b320c33272c52aec1fbca_img.jpg\)](#)

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Michael J. Willemin <mwillemin@wigdorlaw.com>

Sent: Friday, June 14, 2024 6:03 PM

To: Joshua Glasgow <JGlasgow@phillipslytle.com>; Preston L. Zarlock <PZarlock@phillipslytle.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>

Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

I've only got three. I was hoping for some input on a couple more, and may have some over the weekend, but if you won't consider anyone after today I understand.

Martin Scheinman
Jacqueline Drucker
Harvey Sanders

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com

[!\[\]\(465772ce2fc0e39b7001e2580b915cc2_img.jpg\)](#) [!\[\]\(77439761797f4473f1e57c731fcf1334_img.jpg\)](#) [!\[\]\(a71dd2456c29fb556c42521a548b9447_img.jpg\)](#) [!\[\]\(9074adcc72cd263bce57d45767c69179_img.jpg\)](#)

<image023.png>

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately destroy or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Joshua Glasgow <JGlasgow@phillipslytle.com>
Sent: Friday, June 14, 2024 6:01 PM
To: Preston L. Zarlock <PZarlock@phillipslytle.com>; Michael J. Willemin <mwillemin@wigdorlaw.com>
Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>
Subject: RE: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael, per the agreed protocol in our emails below, defendants suggest the following five potential arbitrators:

William Bauer - <https://www.woodsoviattgilman.com/people/william-g-bauer>

Richard Chapman - <https://www.linkedin.com/in/richardnchapman/>

Ann Evanko - <https://www.hurwitzfine.com/lawyers/profile/ann-evanko>

Michael McClaren - <https://www.websterszanyi.com/our-people/michael-mcclaren/>

Thomas Stander - <https://adamsleclair.law/attorneys/hon-thomas-a-stander/>

Thanks,
Josh

From: Preston L. Zarlock <PZarlock@phillipslytle.com>
Sent: Friday, June 14, 2024 11:51 AM
To: Michael J. Willemin <mwillemin@wigdorlaw.com>
Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com; croberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco <dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J. Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>; Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy <EMurphy@phillipslytle.com>
Subject: Re: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

That's fine

On Jun 14, 2024, at 11:39 AM, Michael J. Willemin
<mwillemin@wigdorlaw.com> wrote:

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Can we push this back to 6pm?

Michael J. Willemin

Partner

212 257 6800
85 Fifth Avenue
New York, NY 10003

wigdorlaw.com

— — — — —
This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or its intended recipient (or responsible for delivery of the message to such person(s)), do not read, copy, or forward this message to anyone and, in such case, please immediately delete or delete this message, including any copies hereof, and kindly notify the sender by reply e-mail or phone. Thank you.

From: Preston L. Zarlock <PZarlock@phillipslytle.com>

Sent: Tuesday, June 11, 2024 11:25 AM

To: Michael J. Willemin <mwillemin@wigdorlaw.com>

Cc: Monica Hincken <mhincken@wigdorlaw.com>; mroehl@roachbrown.com;
CRoberts@gross-shuman.com; kburke@gross-shuman.com; Dennis C. Vacco
<dvacco@lippes.com>; Carmen Alexander Vacco <cvacco@lippes.com>; Nathaniel J.
Kuzma <nkuzma@lippes.com>; Amy Habib Rittling <ahabibrittling@lippes.com>; Nyla
Samee <nsamee@wigdorlaw.com>; Janmarie Robinson <JRobinson@phillipslytle.com>;
Joshua Glasgow <JGlasgow@phillipslytle.com>; Emma P. Murphy
<EMurphy@phillipslytle.com>

Subject: FW: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

Michael -

As you can see the Court thankfully clarified that we have until June 21, not June 12 to agree on an arbitrator. That gives us a bit of time but not that much.

Defendants suggest the following protocol for selection of an arbitrator. Each side is to identify 5 (or some other reasonable number) of potential arbitrators and exchange them by noon this Friday, June 14 and then we can confer on Monday June 17. In selecting candidates no party or their representatives will have any contact with the candidates - not even to gauge conflicts or interest in serving. We can do that if any are potentially acceptable.

Let me know if this is acceptable or If you have other suggestions.

Regards

Preston

From: webmaster@nywd.uscourts.gov <webmaster@nywd.uscourts.gov>
Sent: Monday, June 10, 2024 4:36 PM
To: Courtmail@nywd.uscourts.gov
Subject: Activity in Case 1:23-cv-00882-JLS Betters v. Nardin Academy et al E-Filing Notification

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

Docket Text:
E-Filing Notification re [106] ORDER
referring case to arbitration and staying the action: Entry modified on 6/10/2024
to correct the status report due date from June 12, 2024 to <u>June 21, 2024.</u>
(KLH)

Preston L. Zarlock
Partner



One Canalside
125 Main Street
Buffalo, NY 14203-2887
Phone 716 847 5496
Fax 716 852 6100

620 Eighth Ave
38th Floor
New York, NY 10018-1442
Phone 212 759 4888 Ext. 5496
Fax 212 308 9079
PZarlock@phillipslytle.com
www.phillipslytle.com
[Download vCard](#)



Think before you print and save a tree.

This electronic transmission and any attachments hereto are intended only for the use of the individual or entity to which it is addressed and may contain confidential information belonging to the sender which is protected by the attorney-client privilege. If you have reason to believe that you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this electronic transmission is strictly prohibited. If you have reason to believe that you have received this transmission in error, please notify immediately by return e-mail and delete and destroy this communication.

WARNING: E-mail communications cannot be guaranteed to be timely, secure, error-free or virus-free. The recipient of this communication should check this e-mail and each attachment for the presence of viruses. The sender does not accept any liability for any errors or omissions in the content of this electronic communication which arises as a result of e-mail transmission.

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.